

STATUTORY CRIMINAL 4.02

JUSTIFICATION DEFENSE IN EXECUTION OF PUBLIC DUTY

A defendant is justified in using or threatening physical force or deadly physical force if:

1. It was required or authorized by law; *or*
2. A reasonable person in a similar situation would believe that it was required or authorized [by the judgment or direction of a competent court or tribunal, even though the court or tribunal may have lacked jurisdiction] [in the lawful execution of legal process, even though there may have been a defect in the legal process]; *or*
3. A reasonable person in a similar situation would believe that it was required or authorized to assist a peace officer in the performance of such officer's duties, even though the officer may have exceeded the officer's legal authority.

A defendant may use deadly physical force in execution of public duty only to protect against another's use or apparent attempted or threatened use of deadly physical force.

Defense in execution of public duty justifies the use or threat of physical force or deadly physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of physical force or deadly physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force or deadly physical force in defense of execution of public duty.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

If evidence was presented that raises the defense of justified use of, or threatened, physical force or deadly physical force for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

SOURCE: A.R.S. § 13-402 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

USE NOTE: Use the language in brackets as appropriate to the facts. "Physical Force" and "Deadly Physical Force" are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.05(12) & (28)).

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on "affirmative defense" so as to inform the jury on the correct burden of proof. "Affirmative defense" is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative

defense must be shown by a preponderance of the evidence. "Preponderance of the evidence" is defined in Standard Instruction 5b(2).

COMMENT: The Arizona Supreme Court has required that an instruction under A.R.S. §§ 13-404 & -405 must include a reference to the reasonable person standard. *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995). Because A.R.S. § 13-402 requires a reasonable person standard in paragraphs 2 and 3 above, the direction given in *Grannis* will likely apply in this Instruction.

MCAO 7/2006